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In the Supreme Court of United States

OCTOBER TERM, 1945

No. 1118

PAUL A. PORTER, ADMINISTRATOR,
OFFICE OF PRICE ADMINISTRATION,
Petitioner

v.

MARY JO DICKEN AND ELIZABETH M. DICKEN, B. N. MURRAY, Executor of the Estate of Emma Gang, Deceased, JACOB E. SANDUSKY, Sheriff

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS

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Since the filing of this case in this Court, we have had an opportunity to examine the Lee Cases (Nos. 1116 and 1117, in this Court). Those cases should not be linked with the instant case because there is no similarity. The Lee Cases are definitely based on actions primarily and exclusively of eviction. The instant case grows out of an order and confirmation of a judicial sale proceedings brought in the Pro-

suing, with its order of sale and confirmation, a writ of possession, the petitioner could have obtained relief in the State Courts, by stay of execution, supersedeas or otherwise. An order or judgment of a State Court should not be rashly enjoined by a Federal Tribunal where there is an adequate remedy at law in the State Court when a Federal statute is involved, and both Courts, have equal and concurrent jurisdiction, and both are impressed with the duty of enforcement.

CONCLUSION

1. Injunction should not be granted where there is a plain, adequate and complete remedy at law.

2. Judicial sales, by reason of their non-recurrent nature, are not contemplated in the Emergency Price Control Act.

3. If the relief sought by the petitioner be granted, a collision would then exist between the State and Federal Tribunals.

4. The Courts of the United States should not be called upon to circumvent Section 265 of the Judicial Code in a short-lived, passing and subsiding emergency.

The Court's attention is respectfully referred to the respondents' Answer and Brief to the Petition for a Writ of Certiorari.

Respectfully submitted,

B. N. MURRAY,

for himself and the other Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 1118.—October Term, 1945.

Paul A. Porter, Administrator, Office of Price Administrator, Petitioner,
vs.
Mary Jo Dicken and Elizabeth M. Dicken, B. N. Murray, Executor of the Estate of Emma Gang, Deceased; Jacob E. Sandusky, Sheriff.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[May 27, 1946.]

Mr. Justice Black delivered the opinion of the Court.

This case, like *Porter* v. *Lee*, Nos. 1116-1117, this day decided, involves the jurisdiction of the federal District Court to grant an injunction, sought by the Price Administrator under Section 205(a) of the Emergency Price Control Act, to restrain eviction of a tenant under an order of a state court where the Administrator alleges that eviction would violate the Act and valid regulations promulgated pursuant to it. Briefly stated the circumstances of the controversy are these: B. M. Murray, as executor of an estate, pursuant to authority granted him by the Probate Court of Franklin County, Ohio, sold a house located within the Columbus Defense Rental Area. A writ of possession directing the sheriff of the County to evict the tenant and to place the respondent purchasers in possession was obtained in the Probate Court. No certificate authorizing the eviction was sought or obtained from the Price Administrator as is required by Section 6 of the Rent Regulation for Housing. 10 F. R. 3436, 13528. Before the sheriff executed the writ the Price Administrator brought this action for an injunction in the federal District Court. The District Court issued a temporary restraining order but later dismissed the complaint on the ground that Section 265 of the Judicial Code, 28 U. S. C. 379, deprived the federal District Court of jurisdiction to stay the proceedings in the state court. This section provides that: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." The

District Court in dismissing the cause entered an order restraining respondents from evicting the tenant pending determination by the Circuit Court of Appeals for an application for an injunction prohibiting the eviction pending an appeal to that Court. The Administrator made this application in the Circuit Court of Appeals, but it was denied, thus removing all obstacles to eviction of the tenant. The Circuit Court of Appeals has not heard this case. In order to prevent eviction of the tenant the Administrator sought and obtained from Mr. Justice Reed an injunction pending final disposition of this case in this Court and applied for certiorari directly to this Court under Section 240(a) of the Judicial Code which authorizes us to grant certiorari "either before or after the judgment or decree by such lower court." We were prompted to bring the District Court's judgment directly to this Court for review by reason of the close relationship of the important question raised to the question presented in *Porter* v. *Lee*, Nos. 1116, 1117, decided this day.

The District Court was of the opinion that since Section 205(c) of the Act gave concurrent jurisdiction to state courts to grant relief by injunction, the policy of Section 265 against federal injunctions of state proceedings should not be considered impaired by the Emergency Price Control Act. The District Court's conclusion was that if the Administrator wanted an injunction to restrain eviction under state court procedure he should have gone into some state court that had jurisdiction of the cause. The District Court erred in holding that the policy of Section 265 of the Judicial Code should not be considered impaired by the Emergency Price Control Act. While we realize that Section 265 embodies a long-standing governmental policy to prevent unnecessary friction between state and federal courts, *Toucey* v. *New York Life Insurance Company*, 314 U. S. 126, we still hold as we held in *Willingham* v. *Bowles*, 321 U. S. 503, that Section 205 of the Price Control Act which authorizes the Price Administrator to seek injunctive reliefs in appropriate courts, including federal district courts, is an implied legislative amendment to Section 265, creating an exception to its broad prohibition.[1] This

[1] An alternative reason given for the decision in the *Willingham* case was that since the state court there was attempting to enjoin the Administrator from performing his duties under the Act, the District Court had power both under 205(a) of the Act and Section 24(1) of the Judicial Code to protect the exclusive federal jurisdiction which Congress had granted. But our opinion did not, as the District Court thought, depend entirely on this alternative ground.

is true, because Section 205 authorizes the Price Administrator to bring injunction proceedings to enforce the Act in either state or federal courts, and this authority is broad enough to justify an injunction to restrain state court evictions. But if Section 265 controls, as the District Court held, the Administrator here could not proceed in the federal court; since there is a proceeding pending in a state court. Since the provisions of the Price Control Act, enacted long after Section 265, do not compel the Administrator to go into the state courts but leave him free to seek relief in the federal courts, he was not barred by Section 265 from seeking an injunction to restrain an unlawful eviction. Cf. *Hale* v. *Bimco Trading, Inc.*, 306 U. S. 375.

The judgment of the District Court is reversed and the case is remanded to that Court to exercise the jurisdiction conferred upon it by Section 205 of the Emergency Price Control Act.

Reversed and remanded.

Mr. Justice JACKSON took no part in the consideration or decision of this case.